

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION IV

CACR07-166

February 20, 2008

HEATHER MARIE CONNOR
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[CR-06-309]

HONORABLE DAVID L. REYNOLDS,
CIRCUIT JUDGE

DISMISSED

Appellant, Heather Connor, was charged with possession of a controlled substance, methamphetamine, and possession of drug paraphernalia, a syringe. She “adopted” her co-defendant’s motion to suppress evidence, and a hearing on the motion was held on October 30, 2006, following which the trial court denied the motion. On October 31, 2006, appellant pled guilty to the offense of possession of a controlled substance, methamphetamine, and the State *not prossed* the possession-of-drug-paraphernalia count. The judgment and commitment order was entered that same day.

On November 28, 2006, appellant filed a motion to amend the judgment and commitment order to correct “an error in said previously entered judgment and commitment order with respect to the reservation of the Defendant’s right to appeal any adverse Order of

the Court as to Defendant's Motion to Suppress Evidence." That is, appellant contended that she "entered a conditional plea with the agreement of the prosecuting attorney," pursuant to Rule 24.3 of the Arkansas Rules of Criminal Procedure. The trial court granted the motion, and an amended judgment and commitment order was entered on November 28, 2006. Appellant's notice of appeal was filed on that same date, appealing from "judgment of conviction for violation of A.C.A. 5-64-401; Possession of a Controlled Substance, a Class C felony, by the above named Court entered of record on October 31, 2006, wherein the Defendant was found guilty and sentenced to a term of Thirty-Six (36) Months Probation." We dismiss the appeal for lack of jurisdiction.

Background

The police responded to a "welfare call" concerning appellant and a companion, who were together in a parked car at a Sonic Drive-In. The officer observed appellant lying in the front seat of the car, crying and appearing distraught, even though she told the officer that she was "fine." The officer instructed appellant to exit the car and speak with him away from her companion. A scuffle subsequently erupted between the companion and other officers on the scene. Appellant attempted to intervene in the scuffle, was arrested, and a search of her purse revealed contraband.

As discussed previously, her motion to suppress was denied, and her plea and sentencing hearing was held on October 31, 2006. The pertinent abstracted portion of that hearing follows:

APPELLANT: I previously filled out and completed with Mr. Tackett a guilty plea statement. I have no questions concerning any of those conditions.

I am not under the influence of any drugs or alcohol at this point. I have fully read this statement and I understand all the statements contained in the plea statement.

I am charged with the offense of possession of methamphetamine, a Class C felony and possession of drug paraphernalia, also a Class C felony, punishable by three to ten years in jail and up to a ten thousand dollar fine. I understand that by pleading guilty I am giving up the right to remain silent, to be represented by counsel at all stages, to have a speedy and public trial by jury or a jury might find me unanimously guilty of all the elements of each charge beyond a reasonable doubt.

I was caught with methamphetamine and drug paraphernalia; paraphernalia being a syringe.

My guilty plea statement is signed by me on page four.

THE COURT: I'm going to find that she is aware of her rights and she has waived her rights and she is competent to do so. She did so with advice of counsel, that she is guilty of being in possession of a controlled substance, methamphetamine. State's motion to nol pros count two is granted.

In addition, as revealed in the record, the following specific exchange also occurred between the court and appellant during the above colloquy:

Q. Do you also understand that you have the right to appeal the basis of such judicial errors, you are giving up that right?

A. Yes.

Appellant's Guilty/Nolo Contendere Plea Statement was included in her addendum. She initialed several of her rights, including her right to appeal. Underneath the list of those rights, she initialed the following statement: "I waive all my rights as set forth herein[.]"

Conditional Pleas Pursuant to Rule 24.3

Rule 24.3 of the Arkansas Rules of Criminal Procedure provides in pertinent part:

(b) With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement. If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

This court explained in *Gonder v. State*, 95 Ark. App. 144, 145, 234 S.W.3d 887, 889 (2006):

The general rule is that when a defendant pleads guilty to a charge, he or she waives the right to appeal that conviction. *Green v. State*, 334 Ark. 484, 978 S.W.2d 300 (1998). For relevant purposes before us, only a conditional plea pursuant to Rule 24.3(b) enables a defendant to retain the right to appeal an adverse suppression ruling. Ark. R. App. P. Crim. 1(a) (2005); *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999). Rule 24.3(b) states:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress evidence. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

Our supreme court has interpreted Rule 24.3(b) to require strict compliance with the requirement that *the right to appeal be reserved in writing*. *Barnett v. State*, *supra*. This is so even when there has been an attempt to enter a conditional plea at the trial court level. *Ray v. State*, *supra*. In addition, *the writing must be contemporaneous with the defendant reserving his or her right to appeal*. *Tabor v. State*, 326 Ark. 51, 930 S.W.2d 319 (1996). We also look for an indication that the conditional plea was entered with the approval of the trial court and the consent of the prosecuting attorney. *Noble v. State*, 314 Ark. 240, 862 S.W.2d 234 (1993).

(Emphasis added.) In *Tabor v. State*, 326 Ark. 51, 55–56, 930 S.W.2d 319, 321 (1996), which was cited in *Gonder*, *supra*, our supreme court stated:

In the case now before us, there was no contemporaneous writing by Tabor reserving his right to appeal. Hence, Rule 24.3(b) was not strictly followed, and the Court of Appeals obtained no jurisdiction of the matter. Without jurisdiction, the Court of Appeals had no authority to remand the case to the trial court to settle the

record. Moreover, the subsequent order by the trial court with the attached signed plea statement by Tabor entered after remand cannot breathe life into a moribund appeal where no jurisdiction originally vested. The appeal must be dismissed for Tabor's failure to follow the terms of Rule 24.3(b).

Here, the requirements of Rule 24.3(b) were not met, and the attempt to later cure that lack of compliance was not effective. We, therefore, dismiss this appeal for lack of jurisdiction.

Dismissed.

PITTMAN, C.J., and MILLER, J., agree.